

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOUGLAS BURCHFIELD

Plaintiff,

v.

CSX TRANSPORTATION, INC. and  
THE ANDERSONS, INC.

Defendants.

CIVIL ACTION FILE

NO.: 1:07-CV-1263

**PLAINTIFF'S NOTICE OF CONSTITUTIONAL QUESTION PURSUANT  
TO FED. R. CIV. P. 5.1 (a)**

COMES NOW PLAINTIFF and pursuant to Fed. R. Civ. P. 5.1 (a) files this Notice to call the attention of this Court and others, his intent to challenge the constitutionality of the O.C.G.A. § 51-12-33. Pursuant to Rule 5.1(a), when a party challenges the constitutionality of a state statute, it must then,

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned — or on the state attorney general if a state statute is questioned — either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

Id. In accordance with this statute, Plaintiff shows this Court:

1.

The constitutional question is whether O.C.G.A. § 51-12-33 is unconstitutional under both the United States and Georgia Constitutions.

2.

The document that raises this constitutional question is Plaintiff's Motion to Strike Defendant's Notice of Defense of Fault of Nonparty.

3.

A copy of this notice, as well as other documents related to this issue, are being served upon the Georgia Attorney General, Thurbert E. Baker, Office of the Attorney General, 40 Capitol Square, SW, Atlanta, Georgia, 30334. Plaintiff will supplement this notice with a copy of his Motion to Strike when that is filed with this Court.

4.

This Court is required by Fed. R. Civ. P. 5.1 (b) to certify to the Georgia Attorney General that the constitutionality of O.C.G.A. § 51-12-33 is being

questioned in accordance with 28 U.S.C. § 2403.

5.

The Georgia Attorney General may intervene within 60 days the earlier of when this Notice is filed or when this Court certifies the challenge.

Respectfully submitted,

**WARSHAUER POE & THORNTON, P.C.**

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/s/ Michael J. Warshauer

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Douglas C. Dumont  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2008, I electronically filed PLAINTIFF'S NOTICE OF CONSTITUTIONAL QUESTION PURSUANT TO FED. R. CIV. P. 5.1 (a) with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Robert E. Casey, Jr.  
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/s/ Michael J. Warshauer  
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Georgia Bar No.: 018720  
Douglas C. Dumont  
Georgia Bar No.: 232680  
Attorney for Douglas Burchfield

**CERTIFICATE OF COMPLIANCE**

I certify that the documents to which this certificate is attached have been prepared with one of the font and point selections approved by the Court in LR 5.1C (Book Antigua, 13 pt.) for documents prepared by computer.

This 13<sup>th</sup> day of November, 2008.

/s/ Michael J. Warshauer